IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

SB CIVIL WRIT PETITION NO.4137/1994
Rajasthan State Road Transport Corporation
V/s
The Judge, Labour Court, Jaipur & Ors.
Date of Order : : 31.10.2006

PRESENT
HON'BLE MR. JUSTICE P.S. ASOPA

Mr.M.K. Verma, for the petitioner.
Mr.Babu Lal Gupta, for the respondent No.2.

By the instant writ petition, the petitioner - Rajasthan State Road Transport Corporation (For short "the RSRTC") has challenged the award dated 3.4.1992 passed by the Labour Court whereby punishment of dismissal of respondent No.2 from the services has been set aside and penalty of withholding of three grade increments without cumulative effect has been imposed and a further direction was issued to make the payment of wages from 1.1.1989.

Briefly stated the relevant facts of the case are that after making remark of six passengers without ticket, the services of the respondent No.2 were terminated on 31.3.1986, without following the

mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as “the I.D. Act”), although the respondent No.2 has completed more than 240 days in the last preceding year. The respondent No.2 was employed as Conductor on 4.7.1985 in the petitioner Corporation and the aforesaid action was taken after checking of his Bus on 24.3.1986 when the Bus, which was on the route of Kishangarh – Behror, was moved from Village Chirani fromwhere six passengers were boarded. Just after passing of the river and the Bus has moved one kilometer distance, the same was checked by the Flying Squad. Four tickets were distributed by the Flying Squad after charging the penalty and it was further remarked that the respondent No.2 has taken fare of two passengers, but has not distributed the tickets. Before the Labour Court, the enquiry was conducted and in the said enquiry, it was stated by the respondent No.2 that he was to distribute the tickets to all the passengers, but on account of sudden checking just after one kilometer, he could not distribute the tickets to four passengers and as regard two passengers, he was about to issue the tickets when the Flying Squad just came inside the Bus.

The Labour Court has considered the aforesaid fact and admission of respondent No.2 that fare of two passengers was taken by him and he was about to distribute the tickets. On the basis of said admission, the Labour Court has found the charge proved. The Labour Court after invoking the power under Section 11-A of the I.D. Act and considering the judgment of this Court imposed the penalty of withholding of three grade increments without cumulative effect and further issued direction for back wages from 1.1.1989.

The submission of counsel for the RSRTC is that although the respondent No.2 has been reinstated in service, but still in the present case, the Labour Court has committed an error in substituting the punishment while invoking power under Section 11-A of the I.D. Act even after holding that charge of taking fare from two passengers and not issuing tickets to them is proved.

Counsel for the respondent No.2 submitted that workman has admitted the fact of not issuing the

tickets, but has explained the same that the passengers boarded village Chirani and just after 1 k.m. from the place the Flying Squad came in when he was about to issue the tickets. As regard invocation of power under Section 11-A of the I.D. Act, counsel for the respondent No.2 submits that the distance from which the passengers boarded and the checking taken place is only one kilometer and it is not expected from a Conductor to issue the tickets immediately after boarding of the passengers and when he was about to issue the tickets to two passengers, the Flying Squad came in and further only the amount of fare of two tickets was found surplus in his bag. He further submits that since it was the first misconduct and even after 14 years of his reinstatement, there is no repetition of the aforesaid misconduct or any other kind of misconduct, therefore, in such circumstances, the award is liable to be upheld.

Heard learned counsel for the parties and gone through the record of the case and further considered rival submissions of the parties.

In my view, the Labour Court has rightly reduced

the punishment as there was no intention on the part of the petitioner to retain the money without issuing tickets. There is no error in invoking the power under Section 11-A of the I.D. Act.

As regard awarding the payment of back wages from 1.1.1989, which appears to be the date of raising the dispute, is not proper. The Labour Court ought not to have awarded the back wages in such type of cases where part misconduct is proved.

In view of above, the writ petition is partly allowed. The award of the Labour Court dated 3.4.1992 is modified to the extent that the respondent No.2 is not entitled for back wages from 1.1.1989 and he will be entitled for back wages from the date of award i.e. 3.4.1992. The respondent No.2 will also be allowed all other consequential benefits as awarded by the Labour Court.

(P.S. ASOPA) J.

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